



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 16, 1998

Ms. Barbara G. Heptig  
Assistant City Attorney  
City of Arlington  
P.O. Box 231  
Arlington, Texas 76004-0231

OR98-0977

Dear Ms. Heptig:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114762.

The City of Arlington (the "city") received an open records request from a current city police officer for all e-mails, internal memoranda, reports, and documents sent from or received by certain named city officials that reference the requestor or another named city police officer. You explain that both of the referenced police officers have been the subjects of related disciplinary hearings. You contend that the requested information is excepted from required public disclosure pursuant to sections 552.103, 552.107, and 552.111 of the Government Code.

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. The mere chance of litigation will not trigger section 552.103. Open Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You have submitted to this office for our review a notice of claim letter that the city received from an attorney representing the requestor. Under Open Records Decision No. 638 (1996), this office determined how a governmental body must establish reasonably anticipated litigation when relying on a claim letter. We stated that the governmental body must 1) show that it has received a claim letter from an allegedly injured party or his attorney and 2) state that the letter complies with the notice of claim provisions of the Texas Tort Claims Act or applicable municipal statute or ordinance. Open Records Decision No. 638 (1996).

In this instance, you have made the representation that the notice of claim letter complies with the requirements of the Texas Tort Claims Act. We therefore conclude that you have met your burden of showing that litigation is reasonably anticipated and that the requested records "relate" to the anticipated litigation. The city therefore may withhold the requested information pursuant to section 552.103,<sup>1</sup> with the following possible exception.

Absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). In describing the city's disciplinary appeals procedure, you explain that "[w]hen formal charges are proposed by the police officer's Deputy Chief, the actual charges and *the City's supporting documentary evidence are given to the charged police officer.*" (Emphasis added.) To the extent the requestor or his attorney has previously seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a).<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/RWP/rho

Ref.: ID# 114762

Enclosures: Submitted documents

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<sup>1</sup>Because we resolve your request under section 552.103, we need not address the other exceptions you raise.

<sup>2</sup>We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

cc: Mr. Chris Matthews  
C/o Arlington Police Department  
Mail Stop 04-0200  
620 West Division Street  
Arlington, Texas 76004-1065  
(w/o enclosures)